

Addendum to District Ethics Committee Manual

10/01/2000

Section 19

Docketing Standards for District Ethics Committee Secretaries

The initial decision to docket a case is made by the Secretary of the committee. If the Secretary determines to decline to docket the matter, the file must also be reviewed by a public member of the committee so designated by the Chair. That person is referred to as the "designated public member." R. 1:20-3(e)(2)(D).

Assuming that the grievance should not be declined for the reasons set forth in Section 19.2, there are three preliminary questions to be asked in reviewing a grievance and making a decision whether to docket the matter:

(1) whether the attorney is subject to the jurisdiction of the Supreme Court;

(2) whether the grievance alleges "facts;"

(3) whether the facts, "if true, would constitute misconduct as defined by the Rules of Professional Conduct, case law or other authority, or incapacity." R. 1:20-3(e)(1).

First, the matter should be declined if the individual charged is not a New Jersey attorney or otherwise subject to the jurisdiction of the Supreme Court of New Jersey. Second, the grievance must set forth "facts" that would support probable cause to believe that misconduct has occurred. Thus, a grievance alleging simply a "conspiracy to corrupt justice," without specific facts to support those bare allegations would be insufficient to warrant docketing. Ethics investigations are not pursued based solely on hearsay, innuendo and other wholly unsupported allegations. Anyone who reads the Rules of Professional Conduct can state a conclusory cause of action for violation. The grievant must, however, either have personal knowledge of the facts or have enough information to articulate sufficient "facts" to support the bare allegation. Third, the facts alleged, if proven, must constitute misconduct or incapacity, If all three of these questions are answered affirmatively, then the matter should be docketed.

Secretaries are not permitted to conduct extended investigations before determining whether to docket or not to docket a case. Indeed, grievances should be reviewed and a decision made within 30 to 45 days after receipt. In a number of instances the Secretary will be able to make a decision whether to docket based on the materials provided by the grievant. In other cases, the Secretary may, in order to determine the nature and "facts" of the matter set forth in the grievance, solicit comments from the respondent or third party and may consider such information before making a decision to docket the case. However, when such information is secured, **a copy of that information must be provided to the grievant before the docketing decision is made.** In that case, the grievant must be advised in writing that he/she has ten (10) days to make any response to the materials before a docketing decision is made. This process is necessary in fairness to grievants, especially in light of the fact that there is no right of appeal from a declination in which the designated public member concurs. It also is necessary in order to detect those few, but real, cases where respondents make up and submit documents in response to an ethics inquiry.

Occasionally, grievants attempt to file multiple grievances against five, ten or more attorneys at the same time. No more than three to four such cases should ever be accepted for docketing at the same time. The grievant should be advised to choose the three or four worst attorneys and the system will process them first. After those have been dealt with, then the grievant is free to file against the next group. Experience has shown that such reasonable limitations are necessary. Large numbers of related grievances become unwieldy to investigate at the same time, with the result that the quality of investigations suffer and unnecessary delay almost invariably occurs.